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SHIPBUILDING AND DRY DOCK COMPANY
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 LOIS COLLINS, as Wrongful Death Heir, and as Successor-in-Interest to LESTER 12 COLLINS, Deceased; and DONALD COLLINS, STEPHEN COLLINS, 13 THOMAS COLLINS, DOUGLAS COLLINS, and KAREN LEGGE, as Legal 14 Heirs of LESTER COLLINS, Deceased, 15 Plaintiffs, 16 vs. 17 GENERAL ELECTRIC COMPANY, SUN SHIP, LLC, NEWPORT NEWS 18 SHIPBUILDING AND DRY DOCK COMPANY, 19 20 Defendants.) Case No. CV 08-2704 EDL)) ANSWER OF NEWPORT NEWS) SHIPBUILDING AND DRY DOCK) COMPANY TO COMPLAINT;) DEMAND FOR JURY TRIAL
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21 Defendant Newport News Shipbuilding and Dry Dock Company ("Newport News"
22 or "Defendant") in answer to the complaint of plaintiffs Lois Collins, et al ("Plaintiffs") for
23 asbestos wrongful death, admits, denies, and alleges as follows:

24 I.

25 **PARTIES**

26 1. Newport News lacks sufficient information to admit or deny the allegations
27 contained in paragraph 1 and therefore denies each and every allegation.
28

2. Newport News admits that the term “Decedent” means Lester Collins and the term “surviving spouse” refers to Lois Collins. Newport News admits that Mr. Collins passed away on or about June 21, 2007. Newport News lacks sufficient information to admit or deny the remaining allegations contained in paragraph 2 and therefore denies each and every allegation.

3. Newport News lacks sufficient information to admit or deny the allegations contained in paragraph 3 and therefore denies each and every allegation.

4. Newport News lacks sufficient information to admit or deny the allegations contained in paragraph 4 and therefore denies each and every allegation.

5. Newport News lacks sufficient information to admit or deny the allegations contained in paragraph 5 and therefore denies each and every allegation.

6. Newport News lacks sufficient information to admit or deny the allegations contained in paragraph 6 and therefore denies each and every allegation.

II.

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

7. Jurisdiction: Newport News admits that it is a corporation organized and existing under the laws of the Commonwealth of Virginia. As to the remaining allegations of this paragraph, Newport News lacks sufficient information to admit or deny the allegations and therefore denies each and every allegation.

8. Venue/ Intradistrict Assignment: Newport News denies the allegations contained in paragraph 8.

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Negligence-Survival)

9. Newport News denies that it is in any way responsible for Plaintiffs’ or Decedent’s alleged injuries or damages and further denies that it can be held responsible for the purported conduct of “Alternate Entities” identified as “CONTINENTAL MARITIME INDUSTRIES, INC., SERVICE ENGINEERING CO., and NQ DE NNS

1 MERGER CORP.” or any of them as alleged in the complaint. As to the remaining
2 allegations of paragraph 9, Newport News lacks sufficient information to admit or deny the
3 allegations and therefore denies each and every allegation.

4 10. Newport News denies the allegations contained in paragraph 10 as applied to
5 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
6 information to admit or deny the allegations and therefore denies each and every
7 allegation.

8 11. Newport News denies the allegations contained in paragraph 11 as applied to
9 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
10 information to admit or deny the allegations and therefore denies each and every
11 allegation.

12 12. Newport News denies the allegations contained in paragraph 12 as applied to
13 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
14 information to admit or deny the allegations and therefore denies each and every
15 allegation.

16 13. Newport News denies the allegations contained in paragraph 13 as applied to
17 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
18 information to admit or deny the allegations and therefore denies each and every
19 allegation.

20 14. Newport News lacks sufficient information to admit or deny the allegations
21 contained in paragraph 14 and therefore denies each and every allegation.

22 15. Newport News denies the allegations contained in paragraph 15 as applied to
23 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
24 information to admit or deny the allegations and therefore denies each and every
25 allegation.

26 16. Newport News lacks sufficient information to admit or deny the allegations
27 contained in paragraph 16 and therefore denies each and every allegation.
28

1 17. Newport News admits that the Florida Certificate of Death lists the cause of
2 Decedent's death as "Mesothelioma." As to the remaining allegations of this paragraph,
3 Defendant lacks sufficient information to admit or deny the allegations and therefore
4 denies each and every allegation.

5 18. Newport News denies the allegations contained in paragraph 18 as applied to
6 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
7 information to admit or deny the allegations and therefore denies each and every
8 allegation.

9 19. Newport News denies the allegations contained in paragraph 19 as applied to
10 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
11 information to admit or deny the allegations and therefore denies each and every
12 allegation.

13 20. Newport News denies the allegations contained in paragraph 20 as applied to
14 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
15 information to admit or deny the allegations and therefore denies each and every
16 allegation.

17 21. Newport News denies the allegations contained in paragraph 21 as applied to
18 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
19 information to admit or deny the allegations and therefore denies each and every
20 allegation.

21 22. Newport News denies the allegations contained in paragraph 22 as applied to
22 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
23 information to admit or deny the allegations and therefore denies each and every
24 allegation.

25 23. Newport News denies the allegations contained in paragraph 23 as applied to
26 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
27 information to admit or deny the allegations and therefore denies each and every
28 allegation.

1 24. Newport News denies the allegations contained in paragraph 24 as applied to
2 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
3 information to admit or deny the allegations and therefore denies each and every
4 allegation.

5 25. Newport News denies the allegations contained in paragraph 25 as applied to
6 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
7 information to admit or deny the allegations and therefore denies each and every
8 allegation.

9 **SECOND CAUSE OF ACTION (Products Liability-Survival)**

10 26. Newport News incorporates its responses to paragraphs 9-25 and by
11 reference in response to the allegations contained in paragraph 26.

12 27. Newport News denies the allegations contained in paragraph 27 as applied to
13 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
14 information to admit or deny the allegations and therefore denies each and every
15 allegation.

16 28. Newport News denies the allegations contained in paragraph 28 as applied to
17 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
18 information to admit or deny the allegations and therefore denies each and every
19 allegation.

20 29. Newport News denies the allegations contained in paragraph 29 as applied to
21 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
22 information to admit or deny the allegations and therefore denies each and every
23 allegation.

24 30. Newport News denies the allegations contained in paragraph 30 as applied to
25 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
26 information to admit or deny the allegations and therefore denies each and every
27 allegation.

28

1 31. Newport News denies the allegations contained in paragraph 31 as applied to
 2 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
 3 information to admit or deny the allegations and therefore denies each and every
 4 allegation.

5 32. Newport News denies the allegations contained in paragraph 32 as applied to
 6 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
 7 information to admit or deny the allegations and therefore denies each and every
 8 allegation.

9 33. Newport News denies the allegations contained in paragraph 33 as applied to
 10 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
 11 information to admit or deny the allegations and therefore denies each and every
 12 allegation.

13 34. Newport News denies the allegations contained in paragraph 34 as applied to
 14 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
 15 information to admit or deny the allegations and therefore denies each and every
 16 allegation.

17 35. Newport News denies the allegations contained in paragraph 35 as applied to
 18 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
 19 information to admit or deny the allegations and therefore denies each and every
 20 allegation.

21 36. Newport News denies the allegations contained in paragraph 36 as applied to
 22 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
 23 information to admit or deny the allegations and therefore denies each and every
 24 allegation.

25 **THIRD CAUSE OF ACTION (Negligence-Wrongful Death)**

26 37. Newport News incorporates its responses to paragraphs 9-25 and 27-36 by
 27 reference in response to the allegations contained in paragraph 37.

28

1 38. Newport News admits that the complaint alleges the relationship between
2 Decedent and Plaintiffs but lacks sufficient information to admit the accuracy of the
3 allegations.

4 39. Newport News lacks sufficient information to admit or deny the allegations
5 contained in paragraph 39 and therefore denies each and every allegation.

6 40. Newport News denies the allegations contained in paragraph 40 as applied to
7 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
8 information to admit or deny the allegations and therefore denies each and every
9 allegation.

10 41. Newport News denies the allegations contained in paragraph 41 as applied to
11 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
12 information to admit or deny the allegations and therefore denies each and every
13 allegation.

14 42. Newport News denies the allegations contained in paragraph 42 as applied to
15 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
16 information to admit or deny the allegations and therefore denies each and every
17 allegation.

18 43. Newport News denies the allegations contained in paragraph 43 as applied to
19 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
20 information to admit or deny the allegations and therefore denies each and every
21 allegation.

22 **FOURTH CAUSE OF ACTION (Products Liability-Wrongful Death)**

23 44. Newport News incorporates its responses to paragraphs 9-25, 27-36, and 38-
24 43 by reference in response to the allegations contained in paragraph 44.

25 45. Newport News denies the allegations contained in paragraph 45 as applied to
26 it. As to the remaining allegations of this paragraph, Defendant lacks sufficient
27 information to admit or deny the allegations and therefore denies each and every
28 allegation.

FIRST AFFIRMATIVE DEFENSE

46. Plaintiffs' complaint fails to state a claim against Newport News upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

47. Newport News alleges that the product involved was materially altered or changed by a party or parties other than, and without the permission of, this answering defendant, its employees, servants, or other agents, such alteration or change creating the alleged defect, if any, which was the legal cause of Plaintiffs' or decedent's injuries, or damages, if any.

THIRD AFFIRMATIVE DEFENSE

48. Newport News alleges that the defect in the product, if any, was known to decedent, who used said product after full knowledge of said alleged defect; that, as a result, Plaintiffs are barred from recovery herein, proportionately or totally, in that decedent voluntarily exposed himself and his property to a known danger and thereby assumed the risk of any injury or damage resulting from that injury.

FOURTH AFFIRMATIVE DEFENSE

49. Newport News alleges that Plaintiffs' complaint and each and every cause of action therein based upon warranty or breach thereof, is barred as a result of failure of Plaintiffs or decedent to give notice required under *Commercial Code* section 2607(3)(a).

FIFTH AFFIRMATIVE DEFENSE

50. Newport News alleges that the product was improperly maintained and cared for by decedent or his employers or agents; that such improper maintenance and care created the defect, if any, that was the legal cause of Plaintiffs' or decedent's injuries and damages, if any; that such improper maintenance and care was unforeseeable to this answering defendant; and that Plaintiffs' claim is thereby reduced by the percentage of all responsibility attributable to Plaintiffs, decedent, his employer or other agents by virtue of said improper maintenance and care.

SIXTH AFFIRMATIVE DEFENSE

51. Newport News alleges that the loss, injury, or damage, if any, incurred by Plaintiffs was the result of superseding or intervening causes arising from negligent or willful acts or omissions by parties which Newport News neither controlled nor had the right to control, and said losses, injuries, or damages were not proximately or legally caused by any act, omission, or other conduct of Newport News.

SEVENTH AFFIRMATIVE DEFENSE

52. Newport News alleges that the Plaintiffs and decedent failed to mitigate their damages, if any, in that they failed to use reasonable diligence in caring for decedent's injuries and reasonable means to prevent their aggravation or to accomplish their healing.

EIGHTH AFFIRMATIVE DEFENSE

53. Newport News alleges that, if it is responsible to Plaintiffs, which responsibility is expressly denied, Newport News shall be liable only for the amount of non-economic damages allocated to Newport News in direct proportion to its percentage of fault, if any.

NINTH AFFIRMATIVE DEFENSE

54. Newport News alleges that Plaintiffs' claims are barred by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

55. Newport News alleges that, if the products described in the complaint were manufactured or distributed by this answering defendant, they were manufactured or distributed in accordance with specifications and requirements supplied to defendants by persons other than defendants including, but not limited to, the government of the United States of America. Any defect in said products was caused by deficiencies in said mandatory specifications and requirements supplied to defendant, which deficiencies were neither known to defendant nor discoverable by it with the exercise of reasonable care.

ELEVENTH AFFIRMATIVE DEFENSE

56. Newport News alleges that neither Plaintiffs nor decedent were in privity with defendant and, therefore, may not rely upon the theory of any alleged breach of express or implied warranty.

TWELFTH AFFIRMATIVE DEFENSE

57. Newport News alleges that any exposure of decedent to defendant's products was so minimal as to be insufficient to establish a reasonable degree of probability that any such product caused any alleged injury, damage, or loss to Plaintiffs or decedent.

THIRTEENTH AFFIRMATIVE DEFENSE

58. Newport News is informed and believes, and upon such information and belief alleges that decedent was negligent, careless, reckless, and acted unlawfully in the use, control, direction and application of his bodily movements and the equipment, safety devices, and other facilities supplied to him, and existing as a part of his environment, and the injuries, if any, and damages, if any, were directly and legally caused, contributed to, and exacerbated by his own negligence.

FOURTEENTH AFFIRMATIVE DEFENSE

59. Newport News is informed and believes and upon such information and belief alleges that decedent misused the product and used same after knowledge of defect, if any, existing therein.

FIFTEENTH AFFIRMATIVE DEFENSE

60. Newport News alleges that the decedent's employer so negligently, carelessly, recklessly, and unlawfully directed, controlled, and supplied decedent and his co-employees with a working environment, including safety and protective equipment, clothing or the lack thereof, so as to directly and proximately cause and contribute to the injuries in question, if the same do exist, and to the extent that any sum or sums have been paid to Plaintiffs by said employer, this claim is barred thereby.

SIXTEENTH AFFIRMATIVE DEFENSE

61. Newport News alleges that the complaint, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against defendant and is barred by the provisions of *Labor Code* sections 3600, 3601, and/or 3602.

SEVENTEENTH AFFIRMATIVE DEFENSE

62. The complaint, and each and every cause of action therein, is barred by the applicable statute of limitations.

EIGHTEENTH AFFIRMATIVE DEFENSE

63. Newport News alleges that the statutory authority, including but not limited to *Civil Code* section 3294, pursuant to which plaintiff claims punitive damages is invalid on its face and/or as applied to this answering defendant pursuant to the First, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States and Article I of the Constitution of the State of California.

NINETEENTH AFFIRMATIVE DEFENSE

64. Newport News alleges that, insofar as the Complaint alleges punitive damages against defendant, such damages are not permitted in actions based upon wrongful death.

TWENTIETH AFFIRMATIVE DEFENSE

65. The complaint, and every purported cause action against Newport News, is barred by the "Government Contractor Defense" recognized in *Boyle v. United Technologies Corp.* 487 U.S. 500 (1988).

TWENTY-FIRST AFFIRMATIVE DEFENSE

66. The complaint, and every purported cause action against Newport News, is barred by the derivative sovereign immunity defense recognized in *Yearsley v. W.A. Ross Construction Co.* 309 U.S. 18 (1940).

TWENTY-SECOND AFFIRMATIVE DEFENSE

67. The complaint, and every purported cause action against Newport News, is barred by the "Sophisticated User" doctrine recognized in *Johnson v. American Standard*,

1 *Inc.* (2008) 43 Cal.4th 56, 71 [74 Cal.Rptr.3d 108]. A manufacturer is not liable to a
 2 sophisticated user of its product for failure to warn of a risk, harm, or danger, if the
 3 sophisticated user knew or should have known of that risk, harm, or danger. The
 4 “Sophisticated User” defense applies to both negligence and strict liability causes of
 5 action. At all relevant times, Lester Collins knew or should have known of the risk, harm
 6 or danger, if any, posed by the use of the products allegedly at issue in this case.

7 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

8 68. Defendant is informed and believes and thereon alleges that to the extent that
 9 the “consumer expectations” test is applicable to any design defect claim, if any, it would
 10 depend upon the reasonable expectation of the “sophisticated user” and not the reasonable
 11 expectation of an ordinary consumer, employee, or any individual member of the
 12 “sophisticated user” group.

13 WHEREFORE, defendant Newport News Shipbuilding and Dry Dock Company
 14 prays for judgment as follows:

- 15 1. That Plaintiffs take nothing by way of their complaint and that the complaint
- 16 be dismissed with prejudice;
- 17 2. That Newport News Shipbuilding and Dry Dock Company be awarded its
- 18 costs of suit and attorney fees, as applicable; and
- 19 3. For such other relief as the court deems just and proper.

20 Dated: June 30, 2008

HAIGHT BROWN & BONESTEEL LLP

21 By: 

22 Daniel J. Kelly
 23 Nairi Chakalian
 24 Attorneys for Defendant
 25 NEWPORT NEWS SHIPBUILDING
 26 AND DRY DOCK COMPANY
 27
 28

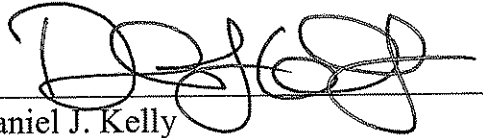
DEMAND FOR JURY TRIAL

Defendant Newport News Shipbuilding and Dry Dock Company hereby demands a trial by jury in this action.

Dated: June 30, 2008

HAIGHT BROWN & BONESTEEL LLP

By: _____


Daniel J. Kelly
Nairi Chakalian
Attorneys for Defendant
NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY